

**Introduced by Senators Ortiz, Alarcon, Chesbro, Escutia,
Figueroa, Florez, Kuehl, Romero, Vasconcellos, and Vincent**

March 8, 2004

Senate Joint Resolution No. 25—Relative to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

LEGISLATIVE COUNSEL'S DIGEST

SJR 25, as introduced, Ortiz. Medicare prescription drugs.

This measure would memorialize the Congress and President of the United States to enact and sign into law specified revisions to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Fiscal committee: no.

1 WHEREAS, On December 8, 2003, the President signed into
2 law the Medicare Prescription Drug, Improvement, and
3 Modernization Act of 2003 (P.L. 108-173, hereafter the “Act”);
4 and

5 WHEREAS, Under the Act, a drug benefit will be made
6 available to Medicare beneficiaries starting in 2006, which will be
7 delivered through private risk-bearing entities under contract with
8 the United States Department of Health and Human Services; and

9 WHEREAS, The Act also provides for an interim prescription
10 drug discount program to be made available starting in June 2004
11 and continuing through the end of 2005; and

12 WHEREAS, The Act provides for premium, deductible, and
13 other cost-sharing subsidies for beneficiaries who are dually
14 eligible for Medicare and Medi-Cal, or have incomes below 150
15 percent of the federal poverty level; and

1 WHEREAS, Under the Act, low-income beneficiaries must
2 meet an asset limit in order to qualify for the drug coverage
3 subsidies under the Act; and

4 WHEREAS, Beneficiaries with incomes below 135 percent of
5 the federal poverty level who do not have Medicaid coverage do
6 not have to pay any enrollment fee to enroll in a drug discount card
7 and will receive up to a \$600 credit in 2004 and another \$600 credit
8 in 2005 towards the cost of drug purchases; and

9 WHEREAS, In order to receive the \$600 subsidy for a drug
10 discount card, beneficiaries cannot be receiving or be eligible for
11 any other drug coverage; and

12 WHEREAS, Under the Act, beneficiaries may not change
13 prescription drug discount cards once they have enrolled in the
14 drug plans, except for a one-time change at the start of 2005; and

15 WHEREAS, Under the Act, sponsors of discount cards will be
16 able to charge enrollees up to a \$30 annual enrollment fee and will
17 be free to make changes in the discounts available to enrollees and
18 in the drugs covered by the cards simply by posting the changes on
19 the Internet; and

20 WHEREAS, To enroll in the drug plans established through the
21 Act in 2006, beneficiaries will be required to pay an annual
22 premium equal to an estimated \$420 and an annual deductible
23 equal to \$250, after which the plans will cover 75 percent of the
24 costs of covered drugs up to an initial \$2,250 coverage limit, none
25 of the cost of drugs between the \$2,250 coverage limit and a
26 \$5,100 upper limit, and most of the cost of drug expenditures
27 above the \$5,100 cap; and

28 WHEREAS, No expenditures by third-party coverage sources
29 may be used to satisfy the coverage gap under the Act, referred to
30 as the “donut hole,” requiring beneficiaries to pay their own
31 out-of-pocket funds to meet the catastrophic coverage cap under
32 the bill; and

33 WHEREAS, Only expenditures for drugs that are covered by a
34 drug plan’s formulary may be used to satisfy the coverage gap
35 under the Act; and

36 WHEREAS, According to the Congressional Budget Office, by
37 indexing premiums, deductible, and other cost sharing limits for
38 beneficiaries to increases in the cost of drugs under the drug
39 program created by the Act, the indexing provisions in the Act will
40 result in premiums increasing to \$696, deductibles increasing to



1 \$445, the initial coverage limit increasing to \$4,000, and the
2 out-of-pocket spending cap increasing to \$6,400 in 2013; and

3 WHEREAS, The Act precludes the United States Department
4 of Health and Human Services from negotiating with drug
5 manufacturers and wholesalers the costs of drugs to be made
6 available under the new drug benefit and instead relies on
7 individual sponsors of the drug discount cards, the prescription
8 drug plans, and Medicare Advantage managed care plans
9 providing prescription drug coverage to negotiate the rates for
10 drugs; and

11 WHEREAS, Individual sponsors of drug discount cards and
12 prescription drug plans and Medicare Advantage managed care
13 plans are unlikely to receive the same low prices the federal
14 government would get by negotiating collectively for
15 beneficiaries, as evidenced by highly successful federal
16 purchasing programs such as the Veterans Administration; and

17 WHEREAS, The Act makes importation of drugs by
18 wholesalers and individuals legal only if the Secretary of the
19 United States Department of Health and Human Services certifies
20 that the importation poses no additional risk to the public's health
21 and safety, and the current Secretary of Health and Human
22 Services has stated that he cannot make the certification; and

23 WHEREAS, As of January 1, 2006, states will no longer be able
24 to receive federal Medicaid matching funds to cover prescription
25 drugs for dual eligible beneficiaries, including funds to help meet
26 cost-sharing requirements or to cover drugs not covered under the
27 new drug benefit due to a plan's formulary, with the result that drug
28 coverage for dual eligible beneficiaries will likely be reduced as
29 a result of the Act; and

30 WHEREAS, Under the Act, states must make financial
31 maintenance of effort payments to the federal government for the
32 cost of coverage under the Act for dual eligible beneficiaries which
33 are the product of three elements: (1) a "take back" factor, which
34 is set at 90 percent for 2006 and phased down to 75 percent in 2015;
35 (2) the number of dual eligibles; and (3) the per capita level of
36 spending by state Medicaid programs in 2003, trended forwarded
37 through 2006 by a growth factor; and

38 WHEREAS, As a result of the financial maintenance of effort
39 requirements in the Act, states including California will
40 experience little fiscal relief from the assumption of prescription

1 drug coverage for the dual eligible population by the Medicare
2 program; and

3 WHEREAS, In 2004 the Act has resulted in potential problems
4 of patient access to cancer treatment in doctor's offices, because
5 the payment amounts for 2004 for some drugs are lower than the
6 price at which physicians can purchase them; and

7 WHEREAS, For 2005 and later years, the Act reduces the
8 payments for cancer treatment drugs and administration services
9 further relative to their 2004 levels, with no mechanism for
10 adjustments to ensure that the payment levels are not lower than
11 the prices at which physicians can purchase them; and

12 WHEREAS, Under the Act, \$900 million is appropriated to the
13 federal Centers for Medicare and Medicaid Services for
14 administration of the Act, including funds to educate beneficiaries
15 about their options under the Act; however, no funds are
16 specifically allocated for the Health Insurance Counseling and
17 Advocacy Program, the primary entity responsible for direct
18 one-on-one unbiased counseling regarding Medicare benefits; and

19 WHEREAS, As a result of the provisions of the Act,
20 beneficiaries face limited protections from the rising costs of
21 prescription drugs; now, therefore, be it

22 *Resolved by the Senate and Assembly of the State of California,*
23 *jointly,* That the Legislature of the State of California
24 memorializes the Congress and President of the United States to
25 enact and sign into law revisions to the Medicare Prescription
26 Drug, Improvement, and Modernization Act of 2003 to: Index
27 increases in beneficiaries' premiums, deductibles, and cost
28 sharing limits to increases in Social Security benefits or changes
29 in income for beneficiaries; give authority to the Secretary of the
30 United States Department of Health and Human Services to
31 negotiate the prices of drugs to be made available to beneficiaries
32 under the Act; to direct the Secretary to work with states on
33 establishing workable systems to enable beneficiaries and others
34 to safely import drugs from Canada; to allow states to receive
35 matching funds if they choose to maintain the existing level of
36 drug coverage for beneficiaries who are dually eligible for
37 Medicare and Medicaid; to require exceptions, or a similar
38 process, under which the Centers for Medicare and Medicaid
39 Services must ensure that the payment amounts for cancer
40 treatment drugs in 2005 and in later years are sufficient to cover



1 physicians' costs of acquiring these drugs; to revise the Act's
2 transitional adjustment payment for drug administration services
3 to an amount that will maintain net revenue available to physicians
4 from drugs and drug administration services in 2005 and 2006 at
5 the same level as in 2004; to eliminate or significantly reduce state
6 maintenance of effort payments to the federal government for the
7 costs of drug coverage for dual eligible beneficiaries; and to
8 require that a portion of the funds appropriated to the Centers for
9 Medicare and Medicaid Services be allocated to the state Health
10 Insurance and Counseling and Advocacy Program to ensure that
11 California's Medicare beneficiaries receive the necessary
12 counseling and assistance to understand all of their health
13 coverage options; and be it further
14 *Resolved*, That the Secretary of the Senate transmit copies of
15 this resolution to the President of the United States, Members of
16 the United States Congress, and the Governor.

